



Ontario

Transition to the New Planning System

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BULLETIN

Planning
reform
in Ontario

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**List of Information Bulletins on
Ontario's New Planning System:**

1. Official Plans and Amendments
2. Plans of Subdivision
3. Consents
4. Zoning and Minor Variances
5. Transition to the New Planning System
6. Planning in Northern Ontario

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Introduction

This bulletin is one in a series intended to explain Ontario's planning system as revised in 1995 to planners, developers, and other participants in land use planning in the Province.

In 1995 the Ontario government amended the Planning Act R.S.O. 1990, and fundamentally changed the way planning is done in Ontario. Ontario's planning system is now more efficient, more accountable, and more protective of the environment. The changes clarified the responsibilities of the different levels of government, and provided the basis for consistent decisions.

The changes to the Planning Act R.S.O. 1990, came into effect on March 28, 1995. At the same time, a new Comprehensive Set of Policy Statements also became applicable to all planning decisions. Since many plans and development applications were in process at the time of proclamation of the Act, this bulletin has been prepared to answer questions regarding the transition to the new system and when the new provisions and policies apply.

The new processes are outlined in detail in the four information bulletins on official plans and amendments, subdivision, consents and zoning/minor variance. The users of this bulletin, should consult these documents as well as the legislation, and the regulations for precise legal interpretations.

The appendices attached to this bulletin list in detail what's new in the revised Act, and what the approval authority should do to prepare to implement these new provisions.

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Transition... What is it?

Transition embodies two components: legislation as set out in changes to the Planning Act, R.S.O. 1990 and policy as contained in the Comprehensive Set of Policy Statements (CSPS). The transition rules of the revised Planning Act are intended to ensure that municipalities and other users of the planning system convert smoothly to both the legislative and policy aspects of the new planning system.

Generally, transition enables those plans and development proposals which were started before March 28, 1995 to follow and conclude with the legal process and policy environment in place at the time.

The revised Planning Act R.S.O. 1990 has a new provision which addresses the transition:

s 74.1(1) Any matter or proceeding mentioned in subsection (2) that was commenced before this section came into force shall be continued and finally disposed of under this Act as it read on the day before this section came into force.

(2) For the purposes of subsection (1), a matter or proceeding shall be deemed to have been commenced, in the case of,

(a) an official plan or an amendment to it or a repeal of it, on the day the by-law adopting the plan or adopting the amendment or repeal of the plan is passed;

- (b) a request for an official plan amendment initiated under section 22 by any person or public body, on the day the request was received, whether or not the official plan amendment is adopted;
- (c) a zoning by-law or an amendment to it, on the day the by-law is passed;
- (d) an application for an amendment to a zoning by-law that has been refused or has not been decided before the day this section comes into force, on the day the application is made;
- (e) development in a site plan control area, on the day the application under subsection 41(4) is made;
- (f) an application for a minor variance under section 45, on the day the application is made;
- (g) an application to amend or revoke an order under section 47, on the day the application is made;
- (h) an application for the approval of a plan of subdivision under section 51, on the day the application is made; and
- (i) an application for a consent under section 53, on the day the application is made.

An important provision also related to transition is s 3(5) which specifies that decisions by approval authorities, councils, the OMB, local boards and planning boards must be consistent with policy statements issued under s 3(1). This applies to all

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decisions on applications commenced after
March 28, 1995.

In addition, the CSPA contains transition
provisions in section G2 that read as follows:

Once the policy statements come into effect, planning authorities “shall be consistent with” the policies in making decisions on all new planning applications. However, where a complete application has been made to the approval authority before the effective date of the policy statements, it must reflect the policy environment in place at the time of application. Similarly, in the review of site plans and rezonings which implement an approved application, planning authorities will apply the same policies which were used to review the approved application.



When do the new “Rules” apply

The transition provisions of the revised Planning Act (section 74.1) stipulate that matters “commenced” under the old provisions of the Planning Act must conclude under the old provisions. The key dates, however, differ from one type of planning application to another:

Planning Application	New Rules After March 28
• OPs, municipally-initiated OPAs, repeals:	date of adoption,
• privately-initiated OPAs:	date request for amendment received,
• zoning bylaw or amendment:	date by-law passed,
• application for rezoning refused or not decided as of proclamation:	date of application,
• development in site plan control area:	date of application,
• minor variance:	date of application,
• application to amend or revoke Minister’s zoning order:	date of application,
• subdivision and consent:	date of application.

A. OFFICIAL PLANS AND AMENDMENTS

If official plans (OPs) or council-initiated official plan amendments (OPAs) were adopted on or after March 28, 1995, then they must proceed under the revised Planning Act. If, however, they were adopted prior to March 28, 1995, then they continue under the provisions of the previous legislation.

Where an OPA was initiated by another party (sometimes referred to as a “private amendment”), the critical date is the one on which the municipality receives the application. Councils and approval authorities may wish to consider distinctive filing systems to differentiate between the two types of amendments.

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B. CONSENTS AND SUBDIVISIONS

For consents and plans of subdivision the commencement date is that of application. Where applications were made prior to March 28, 1995 they will continue and conclude under the old provisions of the Planning Act R.S.O. 1990. The processes in place prior to proclamation must be followed and the approval authority which received the application will make a decision on it.

A new provision in the legislation allows the approval authority to establish a date for the draft approval of a plan of subdivision to lapse after three years. This applies only to subdivision applications received on or after March 28, 1995. Subdivision applications made prior to March 28, 1995 are not subject to a lapsing provision in the legislation. Under the 1983 Planning Act revisions, draft approved plans did not lapse automatically. Prior to 1983, however, lapsing occurred after three years unless draft approval was extended by the approval authority. A few draft approvals (with extended lapsing dates) may yet exist on pre-1983 subdivisions. These lapsing provisions are unaffected by subsequent changes to the Planning Act.

There are other revisions which affect plans of subdivision and/or consents. These include parkland dedication, exemption of subsurface mining rights from subdivision control, and subdivision agreements in unorganized territory. While users should refer to the legislation for

details and the other bulletins, including Planning in Northern Ontario, they should remember that the new provisions apply only to applications received on or after the date of proclamation (March 28, 1995).

Approval authorities may, in a few cases, have to deal with a multi-phase proposal, which is the subject of separate applications. While an initial phase may have been approved or commenced under the old provisions, subsequent phases submitted to the approval authority after March 28, 1995 will proceed under the new rules.

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C. ZONING

The least affected of the planning processes is zoning. The revised Planning Act R.S.O. 1990 stipulates that the commencement date for a rezoning application that has been refused or not decided before March 28, 1995 is the date the application was made. If that date is prior to March 28, 1995 the rezoning must conclude using the processes in the old provisions. However, for (re)zonings that are initiated by municipal council or planning board, the commencement date is the date the by-law is passed. If that date is March 28, 1995 or later, the new legislative processes are applicable. For zoning by planning boards, see the bulletin: Planning in Northern Ontario.

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D. CHANGES IN APPROVAL AUTHORITIES

Another transition issue is who approves plans or development applications. Under the previous provisions, local councils adopted OP's or OPAs, and passed or amended zoning by-laws. This role continues under the revised legislation. What may have changed is who approves the OPs and OPAs. For those OPs or OPAs adopted prior to March 28, 1995, the municipality will forward the documents to the same authority as before. After March 28, 1995, lower tier municipalities in Halton, Durham, Niagara, Hamilton-Wentworth, Waterloo, Ottawa-Carleton, York and the District of Muskoka, will send their adopted OP's and OPA's to the upper tier for approval. In the case of a "private" OPA, the key date is the day the OPA request was received by the local municipality. Those documents adopted (or received) on or after March 28, 1995 go to the authority identified under the new provisions.

OPs and OPAs adopted prior to proclamation will still go to the authority that decided on them under the previous legislation.

Following March 28, 1995 some approval authorities will be dealing with subdivision and consents for the first time. For consent or subdivision applications submitted prior to March 28, 1995, the old approval authority will continue to process them.

Consent authority is assigned to county councils under the existing Act. Where this consent

approval has been sub-delegated to a lower tier government, to staff or to a committee of council, that authority is unchanged. The procedures and process for applications received prior to March 28, 1995 remain unchanged as well. For applications received after March 28, 1995, the new processes and regulations apply. Therefore the delegation agreements may need amending to reflect these new features.

The authority to pass zoning by-laws does not change. Under both the old and the new provisions, that responsibility rests with the local council, in most municipalities.

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E. NOTIFICATION AND PUBLIC MEETINGS

Provisions in the revised Act will affect a municipality's internal procedures. Perhaps the most changes involve notification. The revised Act establishes a number of additional circumstances under which there must be notification.

The Act and the regulations on notice spell out:

- when notification must occur,
- who receives notification,
- how notification is given,
- what the notification must contain,

Municipalities should remember that where matters commenced prior to proclamation, they

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must continue to use the notification procedures in place prior to March 28, 1995. Therefore, until all pre-proclamation matters are concluded, there will be two sets of notification procedures and forms.

Regulations passed under the revised legislation require a public meeting for most subdivision applications submitted on or after the date of proclamation. The old provisions did not require this. Notwithstanding the difference, the approval authority may choose to hold public meetings under the new provisions for all subdivision applications and possibly consent applications regardless of their date of submission.

The approval authority must nevertheless be careful to keep pre-proclamation files separate from post-proclamation files. Such care is especially important when employees must declare that they have complied with all public notification requirements. It is also important since the new appeal and referral provisions differ from the old.

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F. OMB REFERRALS AND APPEALS

The legislation now sets out time-lines for deciding on development applications. These are 90 days for consents, 90 days for council to hold a public meeting on a private OPA, 180 days for plans of subdivisions and 150 days for the approval authority on OPs and OPAs.

Applications commenced prior to March 28, 1995 are not subject to these time-lines. Where an application was submitted prior to proclamation, the old provisions apply and a person can still ask that an OP, OPA or subdivision be referred to the OMB at any time before a decision is made.

Under the new provisions, that person must await the authority's proposed decision before requesting a referral of an OP or OPA, and must await the authority's decision before appealing a plan of subdivision or a consent.

The new provisions regarding OPs and OPAs allow an approval authority to refuse a referral request on certain specified grounds, and also give the OMB more grounds to dismiss an appeal without a hearing. (Refer to the legislation). These apply, however, only where the referral request, or appeal, pertains to a matter commenced on or after proclamation. Where a matter commenced prior to proclamation, the authority must use the old provisions for referring an application to the OMB upon request.

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When the Comprehensive Set of Policy Statements Apply to Planning Decisions

The revised Planning Act R.S.O. 1990 requires all planning decisions to be consistent with the Comprehensive Set of Policy Statements (CSPS). This means that:

- OPs and OPAs adopted by municipal councils after March 28, 1995 must be consistent with the CSPS;
- all privately initiated OPA applications submitted to municipalities after March 28, 1995 must be consistent with CSPS;
- all comprehensive zoning by-laws passed by Council after March 28, 1995 must be consistent with the CSPS;
- all development applications, subdivisions, consents, zoning order amendments, (except when implementing a plan under the Ontario Planning and Development Act), rezonings, minor variances, and site plans received by municipalities and/or the approval authority after March 28, 1995 must be consistent with the CSPS.

However, according to G2 of the CSPS in making a decision on an application for rezoning or site plan control which directly relates to, and implements:

- a site-specific official plan amendment which was specifically designed to authorize the development;

- a site specific rezoning;
- a draft approved plan of subdivision or provisional consent,

that was approved or initiated prior to March 28, 1995 the decision maker must apply the same rules which were used in making the decision on the related application.

For example, a site-specific OPA or rezoning application for townhouses made by a developer prior to March 28, 1995 may require implementation through a subsequent site plan approval. Decisions on the site plan should be made using the policies in place at the time of the decision on the initial application.

Notwithstanding the exception in G2 of the CSPS, municipalities should remember that an important goal of the new planning system is to create a policy-led system. While authorities may make decisions on applications which were made prior to March 28, 1995 using the old policy environment, there is nothing in the revised legislation or the CSPS to prevent them from basing such decisions on the new policy statements. Therefore, to adhere to the intent of the new system, approval authorities are encouraged to make decisions on all matters, old and new alike, that are consistent with the CSPS.



When matters are related which - Policy Statements apply

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Planning matters or documents seldom occur in isolation. Comprehensive zoning by-laws are passed to implement OPs; OPAs often accompany or precede plans of subdivision; while zoning amendments are frequently used to implement OPAs or subdivision plans. During the transition period, there will be cases where one matter commenced prior to March 28, 1995, while a related matter commenced after.

Where a “new” (post-proclamation) comprehensive zoning by-law implements an “old” OP (approved or adopted under the old provisions), that by-law must be consistent with the CSPA. In many cases, it may be possible for by-laws to conform to the OP and be consistent with the CSPA. However, where it is not possible to conform to the OP and be consistent with the CSPA, the OP should be reviewed for consistency with the CSPA and amended accordingly. The OP(A) then may be adopted under the new provisions.

Decisions on OPAs or plans of subdivision commenced after March 28, 1995 must be consistent with the CSPA. This too may mean an application does not conform with the policies in an “old” OP and, therefore, the “old” OP would have to be amended to be consistent with the CSPA. The Act requires that at the time of the 5 year review, OPs must be updated to be consistent with the CSPA. As OPs are updated, this dilemma will disappear. Therefore, municipalities should update their OPs as early as possible.

There will be cases where zoning by-laws must be passed or amended after proclamation to permit a plan of subdivision that was commenced and/or approved prior to proclamation. Policy G2 provides that “in the review of site plans and rezonings which implement an approved application, planning authorities will apply the same policies which were used to review the approved application”. Where the rezoning covers only that plan area, then it will be decided under the old policies as well. Where the rezoning includes not just the plan of subdivision but encompasses a wider area as well, then it must be decided under the new policies.

4 Summary of Transition Provisions

Summary of Transition Provisions

OF SECTION 74.1 OF PLANNING ACT AND SECTION G2
OF COMPREHENSIVE SET OF POLICY STATEMENTS

Application type	Matters commenced before date of proclamation	Matters commenced on or after date of proclamation
<p>Official Plan</p> <p>Note: Section 74.1 of the Act provides that an Official plan is commenced on the date of adoption</p>	<p>According to Section 74.1 of Planning Act, matter is processed under Planning Act, R. S. O. 1990</p> <p>Section 3 of Planning Act requires decision-makers to "have regard to" policy statements</p> <p>Section G2 of CSPS states that the "policy environment" which would have applied before the CSPA was enacted continues to apply*</p>	<p>According to Section 74.1, matter is processed under amended Planning Act</p> <p>Subsection 3(5) of amended Act requires that decisions "shall be consistent with" policy statements</p> <p>The CSPA applies</p>

*Note: The "policy environment" refers to the group of policies which were applied by the Province in the review of development applications before the CSPA was enacted, with the status each had at the time. The voluntary application of the CSPA is encouraged, to promote a policy-led system.

Application type	Matters commenced before date of proclamation	Matters commenced on or after date of proclamation
<p>Official Plan amendment or private amendment.</p> <p><i>Note: Section 74.1 of the Act provides that an amendment which was initiated by council or planning board is commenced on the date of adoption by Council or Planning Board</i></p> <p><i>Section 74.1 of the Act provides that an amendment which was initiated by another party is commenced on the date the request for amendment was made, regardless of whether the amendment was adopted</i></p>	<p>According to Section 74.1 of Planning Act, matter is processed under Planning Act, R. S. O. 1990</p> <p>Section 3 of Planning Act requires decision-makers to “have regard to” policy statements</p> <p>Section G2 of the CSPS states that the “policy environment” which would have applied before the CSPS was enacted continues to apply*</p>	<p>According to Section 74.1, matter is processed under amended Planning Act</p> <p>Subsection 3(5) of amended Act requires that decisions “shall be consistent with” policy statements</p> <p>The CSPS applies</p>

*Note: The “policy environment” refers to the group of policies which were applied by the Province in the review of development applications before the CSPS was enacted, with the status each had at the time. The voluntary application of the CSPS is encouraged, to promote a policy-led system.

Application type	Matters commenced before date of proclamation	Matters commenced on or after date of proclamation
<p>Subdivision, Condominium</p> <p>Note: Section 74.1 of the Act provides that an application for subdivision is commenced on the date the application was made to the Minister, or his delegate, or the approval authority</p>	<p>According to Section 74.1 of Planning Act, matter is processed under Planning Act, R. S. O. 1990</p> <p>Section 3 of Planning Act requires decision-makers to “have regard to” policy statements</p> <p>Section G2 of the CSPA states that the “policy environment” which would have applied before the CSPA was enacted continues to apply*</p>	<p>According to Section 74.1, matter is processed under amended Planning Act</p> <p>Subsection 3(5) of amended Act requires that decisions “shall be consistent with” policy statements</p> <p>The CSPA applies</p>

*Note: The “policy environment” refers to the group of policies which were applied by the Province in the review of development applications before the CSPA was enacted, with the status each had at the time. The voluntary application of the CSPA is encouraged, to promote a policy-led system.

Application type	Matters commenced before date of proclamation	Matters commenced on or after date of proclamation
<p>Consent</p> <p><i>Note: Section 74.1 of the Act provides that an application for consent is commenced on the date the application was made to the Minister, his delegate, or the approval authority</i></p>	<p>According to Section 74.1 of Planning Act, matter is processed under Planning Act, R. S. O. 1990</p> <p>Section 3 of Planning Act requires decision-makers to “have regard to” policy statements</p> <p>Section G2 of the CSPA states that the “policy environment” which would have applied before the CSPA was enacted continues to apply*</p>	<p>According to Section 74.1, matter is processed under amended Planning Act</p> <p>Subsection 3(5) of amended Act requires that decisions “shall be consistent with” policy statements</p> <p>The CSPA applies</p>

*Note: The “policy environment” refers to the group of policies which were applied by the Province in the review of development applications before the CSPA was enacted, with the status each had at the time. The voluntary application of the CSPA is encouraged, to promote a policy-led system.

Application type	Matters commenced before date of proclamation	Matters commenced on or after date of proclamation
<p>Rezoning initiated by municipality or planning board</p> <p>Rezoning initiated by any person or public body other than the municipality or planning board</p> <p><i>Note: Section 74.1 of the Act provides that a rezoning which was initiated by council or planning board is commenced on the date the by-law is passed by Council or Planning Board</i></p> <p><i>Section 74.1 of the Act provides that a rezoning application which was initiated by another party is commenced on the date of application if:</i></p> <ul style="list-style-type: none"> <i>the application was refused prior to the date of proclamation of Section 74.1, or</i> <i>no decision was made on the application prior to the proclamation of Section 74.1. (regardless of whether the by-law was subsequently passed)</i> 	<p>According to Section 74.1 of Planning Act, matter is processed under Planning Act, R. S. O. 1990</p> <p>Section 3 of Planning Act requires decision-makers to “have regard to” policy statements</p> <p>Section G2 of the CSPS states that the “policy environment” which would have applied before the CSPS was enacted continues to apply*</p>	<p>According to Section 74.1, matter is processed under amended Planning Act</p> <p>Subsection 3(5) of amended Act requires that decisions “shall be consistent with” policy statements</p> <p>The CSPA applies. However, Policy G2 of the CSPA permits an application for rezoning which directly relates to “and implements an approved application” such as a site-specific official plan amendment or subdivision to be evaluated by applying the same “policy environment” which was used to evaluate the related application*</p>

*Note: The “policy environment” refers to the group of policies which were applied by the Province in the review of development applications before the CSPA was enacted, with the status each had at the time. The voluntary application of the CSPA is encouraged, to promote a policy-led system.

Application type	Matters commenced before date of proclamation	Matters commenced on or after date of proclamation
<p>Minor Variance</p> <p><i>Note: Section 74.1 of the Act provides that an application for a minor variance is commenced on the day the application was made</i></p>	<p>According to Section 74.1 of Planning Act, matter is processed under Planning Act, R. S. O. 1990</p> <p>Section 3 of Planning Act requires decision-makers to “have regard to” policy statements</p> <p>Section G2 of the CSPS states that the “policy environment” which would have applied before the CSPS was enacted continues to apply*</p>	<p>According to Section 74.1, matter is processed under amended Planning Act</p> <p>Section 3.5 of amended Act require that decisions “shall be consistent with” policy statements</p> <p>The CSPS applies</p>

*Note: The “policy environment” refers to the group of policies which were applied by the Province in the review of development applications before the CSPS was enacted, with the status each had at the time. The voluntary application of the CSPS is encouraged, to promote a policy-led system.

Application type	Matters commenced before date of proclamation	Matters commenced on or after date of proclamation
<p>Site plan</p> <p>Note: Section 74.1 of the Act provides that an application under section 41(4) regarding development in a site plan control area is commenced on the day the application is made</p>	<p>According to Section 74.1 of Planning Act, matter is processed under Planning Act, R. S. O. 1990</p> <p>Section 3 of Planning Act requires decision-makers to "have regard to" policy statements</p> <p>Section G2 of the CSPS states that the "policy environment" which would have applied before the CSPS was enacted continues to apply*</p>	<p>According to Section 74.1, matter is processed under amended Planning Act</p> <p>Section 3.5 of amended Act require that decisions "shall be consistent with" policy statements</p> <p>The CSPS applies. However, Policy G2 of CSPS permits a site plan application which directly relates to "and implements an approved application" such as a site-specific official plan amendment, subdivision or rezoning to be evaluated by applying the same "policy environment" which was used to evaluate the related application *</p>

*Note: The "policy environment" refers to the group of policies which were applied by the Province in the review of development applications before the CSPS was enacted, with the status each had at the time. The voluntary application of the CSPS is encouraged, to promote a policy-led system.

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